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Council of Proprietors of West Jersey---

ORIGIN AND HISTORY

by

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Register of the Council of Proprietors of the Western
Division of New Jersey

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Council of Proprietors of West Jersey

Origin and History

Read before the Society March 11, 1922.

By C. CHESTER CRAIG

Register of the Council of Proprietors of the Western Division
of New Jersey

The history of the Proprietors of the Western Division of New Jersey is so interwoven with that of New Jersey that one can get a much better understanding of their origin by a review of the early history of the Colony.

Years ago at school we were taught that John Cabot by authority of Henry VII of England, in attempting to find the northwesterly passage to India discovered Labrador in 1497, fourteen months before Columbus discovered the Continent; that his son, Sebastian Cabot, in 1498 discovered Newfoundland and coasted as far south as Chesapeake bay; that by virtue of these discoveries the English acquired title to that portion of North America in which New Jersey is situate; that in 1664, King Charles II made a grant to his brother the Duke of York, afterward James II, of a tract extending from the Connecticut river to Delaware bay; that the Duke of York in the same year made a grant of New Jersey to Carteret and Berkley, and that Berkley sold his undivided interest in New Jersey to John Fenwick in trust for Edward Byllinge, an English Quaker, and his assigns. All of which while true as far as it goes, does not give all the facts of the case.

The English title to New Jersey was clouded by the Dutch who discovered the Hudson river in 1609, settled at New York in 1613, in Bergen, N. J., in 1618, issued patents to settlers in the northern part of New Jersey, at Cape May and along the Delaware river; it was also clouded by the Swedes who made settlements along the Delaware river in what are now Gloucester and Salem counties.

At the time that Charles II made the grant to the Duke of York, the Dutch had conquered the Swedes and held absolute control of what is now New Jersey. Their Governor Stuyvesant had effected a treaty with the New England colonists (treaty of Hartford, 9-19-1650), whereby the Connecticut river was recognized by them as the boundary line between the English and Dutch, and in 1654 the treaty between Cromwell and Holland recognized the Dutch claims in America.

At all events the English were not in possession of New Jersey on the date when the grant to the Duke of York was made, and the Duke only obtained possession by sending over a squadron under Col. Richard Nicolls, his deputy governor, to whom Stuyvesant surrendered New Netherland on September 8, 1664.

On June 23 and 24, 1664, the Duke of York made a grant of New Jersey to Lord John Berkley and Sir George Carteret, both of whom were

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and true cavaliers who had fought in the King's cause and were prominent figures at the Court of Charles II.

The Duke apparently did not know the value of the land, nor the extent of the territory, that was included in the grant. We can imagine Nicolls' chagrin when he learned that the Duke had given away nearly the entire sea-coast and a tract of about eight thousand square miles in extent, more than two months before he had wrested it from the Dutch.

After several settlements had been made in the northern and eastern parts of the tract granted to Carteret and Berkley, war broke out between England and Holland and a Dutch squadron of five vessels appearing off New York, the fortress surrendered on July 30, 1673, and the Dutch again became masters of New Jersey, and the officials of the various settlements took the oaths of allegiance to the Dutch crown.

By reason of the conquest by the Dutch, the English government in New York and New Jersey came to an end and the grant to Carteret and Berkley was, according to the principles of English law, rendered void.

On February 9, 1674, by the treaty of peace between the Dutch and English, New York and New Jersey again became subject to the English rule, and on June 29, 1674, the Duke obtained a new patent from his royal brother. This was a new grant and not a grant confirming the former one, as it made no reference to it.

During the war with Holland, Lord Berkley doubtless realizing that his grant was forfeited and that he would encounter much difficulty in obtaining a renewal of it from the Duke, agreed to sell his half interest in New Jersey as above noted, the consideration being £1000, and the sale being consummated on March 18, 1673-4.

As stated before, the Duke of York did not realize until it was too late, that in making the grant to Carteret and Berkley he had done great harm to himself by giving away a large part of his territory, but the new grant restored it all to him again and he determined to place the entire territory under the jurisdiction of his governor, Edmund Andros. However, Sir George Carteret brought such pressure to bear on the Duke that on July 29, 1674, he made a second grant to Carteret. This one did not cover all of New Jersey as did the first, but included that portion of the province north of line running from a "creek called Barnegat, to a certain creek in Delaware river next adjoining to and below a certain creek in Delaware river called Renkokus Kill" (Rancocas creek), which was probably Pensauken creek. The Duke claimed that this grant and the first likewise, did not convey the right of government, although Carteret claimed that the right of government followed the soil and proceeded to set up a government of his own.

In the meantime on February 10, 1675, Edward Byllinge, having become financially embarrassed, made an assignment to three Quackers, William Penn, Gawen Lawrie and Nicholas Lucas, in trust for the benefit of his creditors.

The trustees instituted an investigation of the transactions between Fenwick and Byllinge and found that the former had only a one-tenth interest in the New Jersey lands, while their principal was in fact the owner of nine-tenths of the conveyance. Fenwick at first resisted this award but in 1682

"relinquished his claim to any further right and estate in the moiety of New Jersey." These trustees handled the matter in a very able manner. They divided Byllinge's interest into one hundred shares, or proprieties, and from the sale of a small portion of the shares received sufficient to pay the creditors in full. They framed a set of laws and plan of colonization under date of March 3, 1676, entitled "The Concessions and Agreements of the Proprietors, Freeholders and Inhabitants of the Province of West New Jersey in America," comprising forty-four chapters, the last thirty-two chapters being "The Charter of Fundamental Laws of West New Jersey, agreed upon," signed by one hundred and fifty-one persons.

Up to this time the entire province had been held in "common" by Carteret and Berkley and later by Carteret and Byllinge, when; however, new interests appeared it became necessary to definitely establish the exact shares of the two principals.

On July 1st, 1676, William Penn, Gawen Lawrie, Nicholas Lucas and Edward Byllinge executed a deed with Carteret known as the "Quintipartite Deed," in which the territory was divided into two parts, East Jersey being taken by Carteret and West Jersey by Byllinge and his trustees. In this the trustees showed their foresight, for while the land covered by the Duke's second grant was divided as nearly equally as possible, the deed was drawn in such a manner that Carteret also conveyed to the trustees all his interest in that part of New Jersey which was south of the southern boundary of the second grant. The Quintipartite Deed and the original copy of the grants and concessions bearing the signatures of the one hundred and fifty-one signers, is in the possession of the Council of Proprietors of West Jersey.

The Proprietors then sent five commissioners to New Jersey to represent them in selling land and laying out towns, their instructions being dated 6th month 18, 1676, so that it will be seen that no attempt was made at colonization until after the Duke's second grant was obtained. Before going to West Jersey, the commissioners thought it best to call on the Duke's representative, Governor Andros, in New York, who would not concede that the proprietors had obtained the right of government under the Duke's second grant to Carteret and would not allow the commissioners to proceed, until after they had consented to take out warrants as his subordinates.

Governor Andros in claiming the right of government also claimed the right to levy a 5 per cent. duty on all imports to West Jersey. To this the people of West Jersey objected strenuously. Sir George Carteret having died, his grandson and heir, Philip Carteret, in assuming the governorship of East Jersey was arrested by Andros. Penn laid the matter of the proprietors before the Duke in an able manner, stating that it was represented to Byllinge by Berkley that they had the right of government and that Byllinge would not have purchased had he known that the Duke had reserved the right. Penn's protest was made at the time when the Duke was threatened by the exclusion bill and was obliged to retire to Scotland to avoid the outcry against him. He could ill afford to make an enemy of such a man as Penn, so he consented to refer the matter to Sir William Jones, former attorney general, but who at this time was one of his greatest opponents and who naturally decided against the Duke's right to levy cus-

toms and to exercise the right of government. The language in which this opinion was given is very interesting and quite specific. It is as follows:

28 July 1680

"I doe hereby humbly certify that having heard wt hath beene insisted upon for his Royll Highnesse to make good ye legallity of ye demand of Five pr cent from ye inhabitants of New Jersey: I am not satisfied (by anything that I have yet heard) that ye Duke can legally demand that or any other duty from ye inhabitants of those lands. And yt wch makes ye case stronger against his R^{ll} H^{ss} is that these inhabitants clayme undr a graunt from his Royll Highnesse to ye Lord Berkley and Sir George Carteret in wch graunt there is noe reservac'on of any proffitt or soe much as of juristicc'on.

W. JONES."

The Duke thereupon executed a grant to William Penn, Gawen Lawrie and Nicholas Lucas in trust for Edward Byllinge of all of New Jersey west and south of the division line mentioned in the Quintipartite Deed. Whatever rights the Proprietors of West Jersey had lost by reason of the Dutch reconquest were fully restored to them by virtue of the Duke's second grant to Carteret and the grant to the trustees of Byllinge. This grant also conveyed the right of government of West Jersey to Edward Byllinge and later the Duke made a grant to Sir George Carteret, grandson and heir of the original Proprietor, giving to him the right of government of East Jersey. Governors were appointed by the Proprietors until 1688.

Byllinge having died in 1687 his heirs sold all his interest in West New Jersey, including the right of government, to Dr. Daniel Coxe, a physician to the Queen of Charles II, and afterward to Queen Anne. And he at once took great interest not only in the government of West Jersey but also in the Council of Proprietors. The Duke of York, having ascended the throne as James II, brought such pressure to bear on the Proprietors that they surrendered the right of government to the Crown with Andros as Governor, although Coxe was largely interested in the management of business until James was deposed, when proprietary government was again resumed.

On March 4, 1691, Dr. Daniel Coxe conveyed all his rights and title to lands in America, consisting of over twenty-four shares or rights to Propriety in West Jersey, two shares to Propriety in East Jersey, and large tracts of land in East and West Jersey, New England and Pennsylvania, together with the right of government of West Jersey to forty-eight persons who formed the West Jersey Society. This society appointed the governors from the time that the reign of James II ended until the surrender of government to the Crown in 1702. Many thousands of acres of land were surveyed to the Society and sold by them. The rights of Propriety in West Jersey were held by the West Jersey Society for nearly one hundred and twenty-five years, when they were conveyed to Benjamin B. Cooper on June 28, 1814.

After the fall of James the vexatious customs question which had been vigorously enforced by Andros, and continuously resisted by the inhabitants of New Jersey, came up again and the Proprietors, who had obtained further legal opinion that no duties could be levied on them, petitioned the Lords of Trade that free ports of entry might be established in the Province. In

this they were refused by the English Ministry. They then proceeded to make a test case by attempting to load "The Hester," a vessel from Perth Amboy, but the vessel was seized by the Lord Bellemont, Governor of New York, who sent a force of forty soldiers and took the vessel to New York, where it was sold by inch of candle by direction of the Governor of New York to satisfy the sailors' claims for wages. The Proprietors' Government appealed to the Court of Kings Bench where the matter dragged along in the courts for several years, when a verdict was finally rendered giving several hundred pounds damages, and Perth Amboy was established a free port of entry.

Just at this time King William's lawyers advised him that the grant of government by the Duke of York was void as under the English law no mesne lord could convey power of government but by consent of the king. The Proprietors decided that the best course to pursue was to again surrender the right of government to the Crown with the understanding that their rights to the land would be respected. This was finally consummated in 1702.

Titles to land were at first confirmed by the Commissioners sent over by the Proprietors from England, but on the return of some of the Commissioners to England, the General Assembly confirmed the titles until 1687, when the time of the General Assembly being taken up with the matters of legislation it decided to be bothered with Proprietary matters no longer and requested the Proprietors to choose a convenient number of persons themselves to transact their own business. On February 14, 1687-8, a meeting of the Proprietors was held at Burlington, at which a definite agreement for the establishment of the Council of Proprietors was drawn up and signed, the business of the Council being the granting of title to unlocated land. Five members are elected at Burlington at noon on the tenth day of April of each year. The election formerly was held on the main street, beneath a willow tree which has long since disappeared, a depression in the pavement shows where it formerly stood, and it is at this spot that the election is held. Four members are elected annually at Gloucester at noon on the thirteenth day of April. The election was formerly held beneath a buttonwood tree, which stood beside a walnut tree on the Gloucester Green opposite the Court House about twenty or twenty-five yards from the wreck of the British warship "Augusta." The bark of the buttonwood tree was used for the ballots. Both trees have been blown down and the meetings are now held at the spot where the trees stood, which is located by an unmarked post. Each person holding a one-thirty-second share of a propriety is entitled to vote.

The meetings of the Council of Proprietors are held at the Surveyor General's Office in Burlington on the first Tuesday of May, August, November and February. A right of propriety consists in the ownership of a share or a portion of one of the one hundred shares into which Edward Byllinge's interest in the Western Division of New Jersey was divided. From time to time dividends consisting of rights to so many acres of unlocated land in West Jersey are made to the holders of the rights of Propriety, (that is the Proprietors). These rights to unlocated land are known as Proprietary rights and differ from, but grow out of Rights of Propriety.

Any one desiring to obtain the ownership of a tract of unlocated land must first ascertain the number of acres in the tract, then go to a Proprietor and buy from him a deed for the rights to the required number of acres of unlocated land. The next step is to have the Deputy Surveyor to survey the tract and make a return of it together with a map, which is filed in the Surveyor General's Office at least fourteen days before the next meeting of the Council of Proprietors. The survey is then inspected by the Surveyor General and the calculations are verified by him, and if not opposed, or "caveated" the Surveyor General lays it before the Council who "pass" the survey and order it to be recorded. This perfects the title in the person to whom the survey has been made.

If "caveated" all parties are heard upon the merits of the case and the decision of the Council is final.

A few years ago the State of New Jersey enlarged the State House grounds at Trenton, and desired to include an island in the Delaware River. Upon application the Council of Proprietors granted a survey to the State for the island after it had complied with all the formalities that would have been required of an individual for its acquisition.

One of the record books in the Surveyor General's Office at Burlington formerly belonged to some other corporation before it came into the possession of the Proprietors. On the front page of the book is the following: "Here begins the Disbursements of the Corporation by virtue of their Charter from the King's Most Excellent Mat'y. Dat, 7th of Febru. 1661."

One of the entries is as follows:

"Between April and July 1662

"Paid Mr. John Harwood assign of Mr. Hezekiah Usher of Boston in New England Masht according to a Bill of Exchange drawn on this corporation by the Com^{rs} for ye United Collonys of New England aforesaid dat New Plymouth Sept 12th 1661 the sum of eigh hundred Pounds wth for ye like sum to be Received of the said Mr. Usher there according to form agreem^t made wth him by the said Com^{rs} and is for defraying ye charges of printing ye Byble in ye Indian Language and other necessary disbursements for propagating ye Gospel amongst ye natives there the sum of

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800—0—0.

Another entry shows the payment of the cost of printing pamphlets on the "Progress of Christianity among the Indians of New England."

It is thought by some that the book may have belonged to the Governor and Company for the Propagation of the Gospel in New England, a corporation which afterwards became known as the New England Company.

For many years there was a dispute between the East Jersey and West Jersey Proprietors over the location of the division line between East and West Jersey. The Quintipartite Deed recites that the division line should extend from the most northerly point mentioned in the grant from the Duke of York to Carteret and Berkley ("the Northermost Branch of the said Bay or River of Dela Ware which is in forty-one Degrees and forty minutes

of latitude") "unto the most southwardly poynt of the East syde of Little Egge Harbour."

In 1687 George Keith attempted to run the line commencing at Little Egg Harbor Inlet, but finding that he was running too far to the westward he ceased after running the line about sixty miles. In 1688 Dr. Coxe and Robert Barclay, Governors of the two Provinces, entered into an agreement whereby East Jersey was to contain 2392 square miles and West Jersey 5403 square miles. This, however, was not in accord with the spirit or the letter of the Quintipartite Deed.

In 1718 the Legislature appointed a commission to run the partition line, but the commission could find no branch of the Delaware at $41^{\circ}40'$.

In 1720 John Chapman retraced the Keith line. In 1743 John Lawrence ran a line at random from Little Egg Harbor to the north station at $41^{\circ}40'$, but the inlet had moved to the southward since the signing of the Quintipartite Deed and his commencing point was much farther south than that of Keith and was unsatisfactory to the West Jersey Proprietors.

In 1769 a commission appointed by the King fixed the Mackhackamack as the most northerly branch and where that stream falls into the Delaware River (in $41^{\circ}21'37''$ of north latitude) as the north station point.

The West Jersey Proprietors claim that the division line should extend from the Mackhackamack to the commencing point of the Keith line.

In 1854 commissions appointed by the legislature to run the boundary line between the counties of Burlington and Ocean fixed the Keith line as run in 1687 as the boundary between the two counties.

Probably no question which came before the Proprietors caused more friction or stirred up more political controversy than did the Partition Line.

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